The National Center for Law and Deafness

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December 22, 1995

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Petition for Rulemaking to Require Decoder Circuitry in Computer Systems Used as Television Receivers

Dear Mr. Caton:

Enclosed please find an original and five copies of a Petition for Rulemaking to Require Decoder Circuitry in Computer Systems Used as Television Receivers.

I would appreciate your referring all correspondence regarding this matter to my attention at the National Association of the Deaf, 814 Thayer Avenue, Silver Spring, MD 20910, (301-587-1788).

Sincerely,

Karen Peltz Strauss

Karen Peltz Strauss
Supervising Attorney

Enclosures

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of Closed Captioning)
Requirements for Computer Systems)
Used as Television Receivers)

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PETITION FOR RULEMAKING

Respectfully submitted on this
22nd day of December, 1995

by:

National Association of the Deaf
National Center for Accessible Media
National Center for Law and Deafness
Telecommunications for the Deaf, Inc.
VITAC

National Center for Law and Deafness
800 Florida Avenue, N.E.
Washington, D.C. 20002

Counsel for Petitioners

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Closed Captioning Requirements for Computer Systems Used as Television Receivers	)))	Docket No.

PETITION FOR RULEMAKING

The National Association of the Deaf (NAD), the National Center for Accessible Media, the National Center for Law and Deafness, Telecommunications for the Deaf, Inc., and VITAC (hereinafter NAD et. al.) collectively submit this petition for the Federal Communications Commission (FCC) to issue a rule to require all computers and plug-in circuit boards capable of receiving TV broadcast signals to be capable of displaying closed captioning transmitted on television signals. Petitioners' interests are as follows:

The National Association of the Deaf (NAD) is the nation's largest organization safeguarding the accessibility and civil rights of 28 million deaf and hard of hearing Americans in education, employment, health care, and telecommunications. A private, non-profit organization, the NAD is a federation of 51 state association affiliates including the District of Columbia, organizational affiliates, and direct members. The NAD seeks to assure a comprehensive, coordinated system of services that is accessible to Americans who are deaf and hard of hearing, enabling them to achieve their maximum potential through increased independence, productivity, and integration.

The National Center for Accessible Media (NCAM) of CPB/WGBH is a research and development facility that works to make media accessible to underserved populations, including persons with disabilities, in schools, the workplace, the home, and the community. Among other things, NCAM develops technologies that create access to public mass media, investigates how existing access technologies may benefit other populations, and conducts community outreach to educate people about media access issues.

The National Center for Law and Deafness (NCLD) is a public service of Gallaudet University that has provided technical and legal assistance to deaf and hard of hearing individuals since 1975. NCLD has been an active participant in FCC proceedings designed to expand access to telecommunications for individuals who are deaf and hard of hearing, and was instrumental in the passage of the Television Decoder Circuitry Act. Because of budget cuts, Gallaudet University will be closing NCLD's doors to the public permanently on December 22, 1995.

Telecommunications for the Deaf, Inc. (TDI) is a non-profit consumer advocacy organization dedicated to telecommunications matters. TDI promotes full visual access to information and telecommunications through consumer education and involvement, technical assistance and consulting, application of existing and emerging technologies, networking and collaboration, uniformity of standards, and national policy development and advocacy.

VITAC is a privately held corporation that specializes in

realtime captioning of live television programs and events, and is a leader in providing off-line captioning of pre-recorded programs, including entertainment programs, home videos, museum videos, corporate communication videos, and training videos. VITAC maintains ties with the audience it services through affiliations with deaf and hard of hearing community groups and its own Caption Viewer Advisory Panel.

I. Introduction

The Television Decoder Circuitry Act of 1990, 47 U.S.C. §§303(u), 330(b) requires that all "apparatus designed to receive television pictures broadcast simultaneously with sound be equipped with built-in decoder circuitry designed to display closed-captioned transmissions." This requirement extends to apparatus with picture screens that are at least thirteen inches in size, when such apparatus are manufactured in or imported into the United States.

Recent technology has created a new type of apparatus, at times called a "PCTV", which is capable of performing as both a personal computer and a television receiver. PCTVs are hooked up to monitors that can display information received and processed through either the computer or television signals.

On March 22, 1995, upon the request of manufacturers, the Federal Communications Commission (FCC) issued an interpretation on the extent to which the requirements of the Television Decoder

Circuitry Act (TDCA) apply to PCTVs. 60 Fed. Reg. 16055 (March 29, 1995). In that notice, the FCC's Office of Engineering and Technology (OET) concluded that only those computer systems which have the capability of receiving television signals and which are sold with a monitor that has a viewable picture size of thirteen inches or larger, must have built-in decoder circuitry as required by the TDCA. OET explained that this would include a computer and monitor "in the same housing," or separate computer and monitor units which are sold as part of the same business transaction. OET's interpretation exempts from the decoder requirements two other categories of PCTVs which are nevertheless capable of being used to display television signals on monitors that measure at least thirteen inches. Specifically, the interpretation exempts:

-- computers which are sold without monitors, but which have television reception capability, and

-- separate plug-in circuit boards that can be used to add TV reception capability to an existing personal computer.

As will be shown below, OET's interpretation not only is in violation of the TDCA; it is also extremely impractical, if not virtually impossible, to implement.

II. The FCC Has the Statutory Obligation to Ensure that New Technologies Comply with the Television Decoder Circuitry Act.

When Congress passed the Television Decoder Circuitry Act, it committed itself to the promotion of "full and equal access to

television programming for all citizens. H. Rep. No. 767, 101st Cong., 2d Sess., 3 (1990) (H. Rep.). In contemplating the decoder legislation, Congress considered carefully the existing barriers for consumers seeking access to television through closed captions. Among other things, Congress relied heavily on a report by the Commission on Education for the Deaf (COED). That report, "Toward Equality," explained that without the legislation, consumers would be forced to continue purchasing separate decoder equipment, costing approximately $200.00, to receive closed captions through their televisions. The COED report concluded that this cost was a major deterrent for deaf and hard of hearing people with lower incomes, which prevented these populations from having access to television broadcasts. H. Rep. at 6. A second deterrent to purchasing these decoders, Congress reported, resulted from the mechanical difficulties involved in hooking up separate devices to televisions, video cassette recorders, and cable converter boxes. Because the wire connections needed among these various electronic devices were so complex, many individuals chose to avoid purchasing decoders altogether. S. Rep. 393, 101st Cong., 2d Sess. 3 (1990) (S. Rep.); H. Rep. at 7.

The TDCA was intended to put an end to the need for these separate stand-alone decoders. By eliminating the need to purchase these devices, and by requiring built-in circuitry in <u>any apparatus</u> which (1) had a screen size of at least thirteen

inches and (2) was designed to receive television signals broadcast simultaneously with sound, Congress sought to "enable the widest possible audience to benefit from closed captioning technology." H. Rep. at 10.[1]

Moreover, the fact that the TDCA employs the word "apparatus," rather than "television" in defining the type of devices into which decoder chips must be inserted was an acknowledgement by Congress that the future would likely bring new equipment or mechanisms to receive television signals. Indeed, the Act itself directed the FCC to take note of such new technologies and to "take such action as the Commission determines appropriate to ensure that closed captioning service continues to be available to consumers" as this new video technology is developed. 47 U.S.C. §330(c). For example, Congress explained that the FCC should make sure that the standards adopted for high definition television transmissions provide for the receipt of captions without the use of stand-alone caption decoders. H. Rep. at 14; S. Rep. at 10.

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[1] That Congress intended for the TDCA to be far reaching is reflected by the fact that in 1988, two years prior to passage of the Act, as many as ninety-six percent of new televisions had screen sizes of thirteen inches or larger. Congress was fully aware of this statistic, and in fact rejected as "defeat[ing] the purpose of this bill" a proposal by the Electronics Industry Association that would have limited the decoder mandate to only one model for each screen size for televisions with screens twenty inches and larger. EIA's proposal would have reduced coverage of the TDCA to fewer than forty percent of the televisions then marketed. See S. DuBow, "The Television Decoder Circuitry Act -- TV for All," Temple Law Review, Vol. 64, 609, 616 (1991), quoting Senator Daniel Innoye, Chairman of the Senate Subcommittee on Communications at the Senate Hearing.

Similarly, PCTVs represent a new way of receiving television signals. There can be no question that they are, as provided in the TDCA, "apparatus designed to receive television pictures broadcast simultaneously with sound." 47 U.S.C. §303(u). Nor can there be any question that these new TV computer receivers - whether sold with or without monitors, or sold as personal computers or plug-in circuit boards - are intended for viewing on a screen - in this case, the screen of a computer monitor. Indeed, there would virtually be no reason for the sale or purchase of such TV receivers but for the expectation that they will be used with a monitor's screen.

The TDCA applies to apparatus with screens that measure at least thirteen inches. Although the viewable picture screens of many computer monitors now measure slightly below thirteen inches[2], most newer monitors have viewable picture screens measuring fifteen inches or more, with usable screen sizes exceeding thirteen inches. Dataquest, a company which conducts market research for electronic companies, has reported that by 1997, more than eighty-five percent of computer monitors will be greater than fourteen inches, and will have viewable screens that

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[2] The FCC, relying on a Federal Trade Commission regulation, 16 C.F.R. §410.1, measures a television screen size based on the "viewable" portion of the screen. Some have argued that the Commission can and should develop a different standard for measuring new video technologies, to more fully comport with the objectives of expanding access to closed captioning under the TDCA. We support this approach, which argues that the Commission has authority to use a different standard for PCTV screens, which, unlike televisions, are generally sold according to their overall screen size, and not the smaller viewable portion of their screens.

are thirteen inches or greater. By that time, then, almost all TV receivers for use with computers - whether such receivers are installed in the computer itself or sold in the form of a plug-in circuit board - will, in fact, be used with monitors that are covered by the TDCA's requirement for closed captioning capability. In light of this fact, it makes little sense to require decoder circuitry only in computers that are sold with monitors in a "system" or "as part of the same business transaction," 60 Fed. Reg. at 16056, but not to require this capability in computer components that are sold without monitors or as plug-in circuit boards.

The interpretation issued by OET makes little practical sense for another reason. Specifically, the interpretation presumes that the determination as to whether a PCTV is purchased with a monitor as a "system" or "as part of the same business transaction" is made by the manufacturer of the PCTV. This is because captioned circuitry is installed at the manufacturing stage, long before the computer reaches retailer's shelves. In reality, however, retailers, and often customers design their own computer systems. Under the existing interpretation, then, retailers are prohibited from selling certain PCTVs and monitors as a single system, if the monitor chosen by a customer has a viewable screen size of at least thirteen inches but the PCTV selected had not been equipped with captioning capability at the manufacturing stage. What occurs is a no-win situation: because

the interpretation does not direct manufacturers to install decoder circuitry in all PCTVs, the retailer is limited by what he or she can sell. Yet the manufacturer has no way of knowing which components a customer will decide to purchase, or a retailer will decide to combine as part of the same business transaction, at the time the manufacturer is designing the PCTV.

III. The Universal Service Obligation of the Communications Act Mandates the FCC to Require Decoder Circuitry in All Computers and Circuit Boards with Television Reception Capability

As new technologies on the information superhighway are developed, the Commission has an ongoing obligation, called the universal service obligation, to ensure that, to the greatest extent possible, these technologies are made accessible to individuals with disabilities. Indeed, in passing the TDCA, the House Committee on Energy and Commerce recognized this obligation, and explained that the Act itself was "wholly consistent with, and necessary to meet, the mandate in the Communications Act of 1934 that communications services be 'made available, so far as possible to all the people of the United States.'" H.Rep. at 10, citing 47 U.S.C. §151 (1988). At around the same time, the Senate Committee on Commerce, Science, and Transportation reiterated its own commitment to ensuring "that all Americans have access to and can enjoy the benefits of what is a public benefit -- our Nation's airwaves." S. Rep. at 6.

Television provides a critical "link" to the world, in the form of news, information, education, and entertainment.

Congress affirmed its commitment to ensuring access to this link by enacting the Television Decoder Circuitry Act, and by directing the FCC to ensure that this link is not broken as new technologies are developed. The FCC, too, has recognized the need to ensure full access to television programming by all Americans. Most recently, On December 1, 1995, the FCC issued a Notice of Inquiry requesting detailed information on closed captioned television programming, including its availability, costs, and the need for Commission action to expand its availability and improve its quality. At a conference presented three days after the release of the NOI, Chairman Reed Hundt re-emphasized the commitment of the FCC to guaranteeing access to television programming for individuals with disabilities:

> The public interest, which is the guiding principle of the FCC, requires equal access to the information superhighway for all Americans. We have no higher responsibility and no greater calling than making sure that people with disabilities share in the communications revolution.[3]

It is now incumbent on the FCC to take such actions needed to ensure full and equal access to the communications revolution. For this and all of the above reasons, we request that the FCC adopt a rule that will require all computer components with television reception capability - whether or not such components are sold with a monitor and whether or not sold as a personal computer or a plug-in circuit board - to be equipped with

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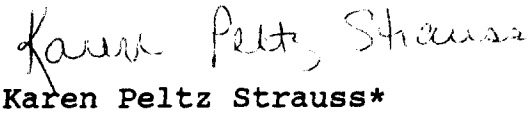
[3]Speech by Chairman Reed Hundt, presented at "Access to the New Frontier", CPB/WGBH National Center for Accessible Media, N.Y., N.Y. (December 4, 1995),

circuitry capable of decoding closed captions.

We further request that the FCC make such other rulings as it deems necessary for this purpose.

Respectfully submitted,



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December 22, 1995

* As of January 16, 1996, Counsel for Petitioners can be reached at the National Association of the Deaf, 814 Thayer Avenue, Silver Spring, Maryland, 20910, Tel: 301-587-1788.